

**Notice of Allowability**

Application No.

10/826,905

Examiner

Darren W. Ark

Applicant(s)

MASTERSON, MICHAEL J.

Art Unit

3643

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Response filed on 03/13/2009.
2. ☒ The allowed claim(s) is/are 1-19,22-62,64-72 and 75-81.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

/Darren W. Ark/  
Primary Examiner, Art Unit 3643

### **REASONS FOR ALLOWANCE**

1. The following is an examiner's statement of reasons for allowance:

In regard to claim 1, the prior art of record does not disclose apparatus for signaling a cumulative amount of weakening to a test material resulting from exposure to a hazardous environment in the ground containing material-consuming organisms comprising openings extending through the body, the openings being transverse to a longitudinal axis of the body; and a flag member, with at least a portion of the flag member being movable from a first position enclosed within the body to a second position upward and out of the body beyond the hazardous environment.

In regard to claim 3, the prior art of record does not disclose apparatus for detecting the presence and eating activity of organisms that damage structures by consuming portions thereof, the apparatus comprising openings extending through the body, the openings being transverse to a longitudinal axis of the body, and a flag member, with at least a portion of the flag member being movable from a first position enclosed within the body to a second position upward and out of the body beyond the hazardous environment.

In regard to claim 17, the prior art of record does not disclose a method for monitoring a predetermined cumulative eating activity of organisms on a bait member, comprising providing a housing having a side wall passage that extends through the housing body in a direction that is transverse to a longitudinal axis of the housing body, and wherein upon consumption of eating activity of the organisms, the bait member is sufficiently weakened and fractures whereupon the flag member is moved via action of

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the spring member from a first position enclosed within the housing body to a second position upward and out of the housing body.

In regard to claim 19, the prior art of record does not disclose apparatus for detecting the presence and eating activity of organisms that damage structures by consuming portions thereof, the apparatus comprising a vertically spaced plurality of entrance passages extending between a first opening in an outside surface of the side wall and a second opening in an inside surface of the side wall, the first opening having a first area, the second opening having a second area being less than the first area, the passages smoothly tapering between the first area and the second area, a consumable porous barrier member covering each of the entrance passages, the entrance passages and the barrier member being on a first face of the body, the body also including a second face having counterparts of the entrance passages and the barrier member; and a flag member, with at least a portion of the flag member being movable from a first position enclosed within the body to a second position upward and out of the body.

In regard to claim 23, the prior art of record does not disclose a method for monitoring structural weakening of a material, the weakening resulting from exposure to subterranean organisms, the method comprising providing the passageway which is transverse to the longitudinal axis of the body, the material being entirely disposed within the body, and the passageway being tapered from a wide diameter end proximate to the soil to a narrow diameter end proximate to the material.

In regard to claim 30, the prior art of record does not disclose a device for signaling the presence of a material-consuming organism, the device comprising the

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material being entirely disposed within the body, the opening which is transverse to a longitudinal axis of the body, and wherein the sidewall of the passage is tapered from a wide diameter end to a distal to the material to a narrow diameter end proximate to the material.

In regard to claim 38, the prior art of record does not disclose a device for signaling the presence of a material-consuming organism, the device comprising the displacement effectuating a signaling member moving from a first position enclosed within the body to a second position upward and out of the body for indicating the presence of the organism in the device.

In regard to claim 50, the prior art of record does not disclose a device for signaling the presence of a material-consuming organism, the device comprising the displacement effectuating an indication of the presence of the organism in the device comprised of a flag member moving from a first position enclosed within the body housing to a second position upward and out of the body housing.

In regard to claim 62, the prior art of record does not disclose a device for signaling the presence of material-weakening organisms, the device comprising the displacement effectuating an exterior projection of a signaling member moving from a first position enclosed within the body to a second position upward and out of the body for indicating the presence of the organisms in the device.

In regard to claim 70, the prior art of record does not disclose a device for signaling the presence of subterranean material-weakening organisms in the soil, the device comprising the displacement effectuating an exterior projection of a signaling

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member moving from a first position enclosed within the body to a second position upward and out of the body for indicating the presence of the organisms in the device.

In regard to claim 80, the prior art of record does not disclose a device for monitoring structural weakening of a material disposed within a body to be placed at least partially in soil, the weakening resulting from exposure to subterranean organisms, the device comprising the material being entirely disposed within the body, the passageway being transverse to a longitudinal axis of the body, and means for signaling the weakening of the material comprising a signaling member with at least a portion of the signaling member being movable from a first position enclosed within the body to a second position out of the body.

In regard to claim 81, the prior art of record does not disclose a device for monitoring structural weakening of a material disposed within a body to be placed at least partially in soil, the weakening resulting from exposure to subterranean organisms, the device comprising a spring mechanism that applies a force to the material, the material being entirely disposed within the body, and the passageway being transverse to a longitudinal axis of the body and having a larger diameter opening proximate to the soil relative to a narrower diameter opening proximate to the material.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/  
Darren W. Ark  
Primary Examiner  
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DWA